**CREDIT APPLICATION for CREDIT FACILITIES**

**GENERAL TERMS AND CONDITIONS OF SALE**

**AND**

**DEED OF SURETYSHIP AND CESSION**

**OF**

**“SUNNYFIELD GROUP OF COMPANIES”**

**INCORPORATING**

**SUNNYFIELD PACKING CO. (Pty) Ltd**

**REGISTRATION NO: 1990/005197/07. VAT NO: 4660119480**

**&**

**HULLEY & RICE (Pty) Ltd**

**REGISTRATION NO: 1963/001275/07. VAT NO: 4250170695**

**&**

**YELLOWFERN TRADING (Pty) Ltd**

**REGISTRATION NO: 2006/030450/07 VAT NO. 4700239660**

**&**

**SUGARBEE SWEETS (PTY) LTD**

**REGISTRATION NO 1987/001018/07 VAT NO 4930142973**

**ELANDSFONTEIN BEVERAGE MARKETING (PTY) LTD**

**REGISTRATION NO 1997/007978/07 VAT NO 4930169730**

**Sales Representative Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**PART A**

THIS APPLICATION FORM IS TO BE FILLED IN AND COMPLETED BY THE DULY AUTHORISED REPRESENTATIVE

**PART 1: GENERAL INFORMATION**

I/We, the undersigned ………………………………..................………………………………………………………………………………………………………………………..

(CUSTOMER NAME) T/A………………………….……………………………………………………………………..hereby make application for credit facility for the opening of an account with the SUNNYFIELD GROUP OF COMPANIES as listed above.

I/We hereby certify that the details given below are true and correct in every respect and undertake to notify the supplier in writing of any change in the details shown below including change of ownership, name and address.

The following information is submitted as a basis for our application for credit facilities.

COMPANY STAMP: Signature ………………………………………………

Print Name: …………………………………………..

Capacity: ……………………………………………….

**PART 2: CUSTOMER**

Name of Business (Customer) …………………………………………………………………………………………………………………………

Full trading name of customer ………………………………………………………………………………………………………………………..

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Private Company |  |  | Close Corporation |  |  | Partnership |  |  | Other (Specify below) |
| Public Company |  |  | Trust |  |  | Sole Proprietor |  |  |  |

Nature of Business: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date commenced Business: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Postal address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_

Delivery address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**\_\_\_\_\_\_\_\_\_\_\_\_\_**\_ (if multiple, attach store listing details)

Physical address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_

Domicilium Address:\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Tel No ………………………… Fax No …………………………. Cell No ………………………………… E-mail …………………………

**PART 3: THE MANAGEMENT (**Tick applicable box below. If insufficient space, please attach a separate page)

Full names of Owner/s, Shareholders, Partner/s, Director/s, Member/s Trustee/s,

Other, (Specify): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Marital Status (Tick box)

Full Name ID. No Residential Address C.O.P. Spouse Aware

1 ………………………………………… ……………………………………… ………………………………………………………………… Y  N Y  N 

2 ………………………………………... ………………………………………. ……………..………………………………………………… Y  N Y  N 

Yes No

Are you currently under or have you applied for a debt review?  

Do you have any dispute in progress with a credit bureau or under administration? 

Do you have any re-arrangement in place with a credit provider  

Do you have any re-arrangement in place with a credit provider under debt review or has he/she for a debt review?  

Do you have a curator bonis?  

If married in C.O.P, is your spouse currently under debt review or has he/she ever applied for a debt review?  

Has the Company/Close Corporation previously been or presently subjected to any:

i Business rescue proceeding (if yes, provide details/particulars on separate page and attach)  

ii Compromise with any creditors (if yes, provide details/particulars on separate page and attach)  

iii Take over arrangements, whether provisional or final (if yes, provide details/particulars on separate page and attach) 

**PART 4: ASSETS AND LIABILITIES (**If insufficient space, please attach a separate page)

Details of fixed property owned

Address Stand no Township Est. Value Bond Value Registered Owner

1 ………………………………. ………….... ………………….. ………………… ……………………………………..

2……………………………….. …………….. ………………….. ………………… ………………………………………

Details of Bonds/encumbrances over immovable property

Amount Details In favor of

1 ……………………………….……… …………………..………………… ……………………………………

2………………………………..……… …………………..………………… ……………………………………

**PART 5: SOURCES OF INFORMATION**

Bank: ……………………………….……………………….. Account no …………………..………………… .

Name of account………………………………..……… Branch…………………..…………………………

Type of account: Current  Cheque  Savings  Other 

If Other please specify …………………………………………………………………………………………………………..

*(If account less than 3 years, provide details of previous bankers on separate page).*

Persons authorized to: Full Names Tel. no./ Cell no. E-mail

Place orders …………………………………….. ………………………………….. ……………………………………………………

Sign Cheques …………………………………….. ………………………………….. ……………………………………………………

Handle queries …………………………………….. ………………………………….. ……………………………………………………

Collect goods …………………………………….. ………………………………….. ……………………………………………………

Audit details (Firm’s name) ……………………………………… Tel no …………………………………………………

Audit Partners’ name ……………………………………………….. Date of last audited balance sheet \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Trade References

Name of Supplier: Contact Person Tel no. Monthly Purchase Terms

1……………………………………………………. …………………………………….. ………………………………….. …………………………

2 …………………………………………………... ……………………………………... ………………………………….. …………………………

3 ……………………………………………… ……………………….………. ………………………………. ……………………..

Are your business premises:

Owned  Leased

Landlord’s name …………………………………………………… Telephone no ………………………………………

Are goods subject to a Landlord’s hypothec? Y N (If yes, provide details/particulars of Landlord on separate page and attach)

Estimated Annual turnover ……………………………………….. Average Annual purchase ……………………………………….

Average monthly purchase ……………………Value of initial order ……………… Official orders used? ........................

In terms of Section 4 (1) (a) (i) of the National Credit Act and Section 5 (2) (b) of the Consumer Protection Act, please state:

* Does the APPLICANT’S ASSET VALUE or ANNUAL TURNOVER exceed R1 million? Y  N 

In terms of the Companies Act 71 of 2008 please state:

* Is the APPLICANT currently under Business Rescue? Y  N 
* Does the APPLICANT intend to apply to Business Rescue within the next six months? Y  N 

**The following credit limit request is for assessment purposes only and does not form part of this contract:**

**Terms required: 7 14 21 30 Days from date of: invoice statement Credit limit required ……………………………..**

**SUNNYFIELD PACKING CO. Credit Limit Required ------------------------------------**

**HULLEY & RICE Credit Limit Required ------------------------------------**

**YELLOWFERN TRADING Credit Limit Required -------------------------------------**

**SUGARBEE SWEETS Credit Limit Required ------------------------------------**

**ELANDSFONTEIN BEVERAGE Credit Limit Required ------------------------------------**

**CUSTOMER’S MONTHLY ACCOUNTING DATE OF CUT-OFF FOR PAYMENTS / DELIVERIES** ………………………………………..……………………….

Only Cheque Pmts,EFT’s & Cash Deposits will be accepted as valid payments

**UNDER NO CIRCUMSTANCES , MAY CASH PAYMENTS BE MADE TO ANY COMPANY REPRESENTATIVE OR AGENT**

**COMMUNICATION**

Our group aims for product and service excellence. However, your valued opinions is needed in order for us to achieve our goal.

Would you like to be excluded from:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Telemarketing Campaign |  |  | Receive SMS messages |  |
| Receive e-mail messages |  |  | Your name to be included in 3rd party marketing lists |  |

I/We hereby certify that the foregoing details are true and correct in every respect and undertake to notify the supplier in writing of any change in the details shown above including change of ownership, name and address.

I/We hereby warrant that the directors / partners / owners have never been insolvent or associated with any business failure. (If not, provide details on separate sheet)

I/We do hereby accept the terms and conditions in its entirety, which conditions I acknowledge having read and understood and agree will be applicable to all contracts for the purchase of goods from The Sunnyfield Group of Companies.

I/We acknowledge that should credit facilities be granted as a result of this application that they may be withdrawn (and/or altered) by the company at any time and the decision of whether to grant or not to grant facilities to the purchaser is at the sole discretion of the supplier. The credit facilities without prior notice and, the decision of whether to grant or not to grant facilities to the purchaser is at the sole discretion of the company. The credit facilities granted by the company will be advised ***in writing*** and the acceptance of this application will only come into effect upon the signing hereof by The Sunnyfield Group of Companies.

I/We hereby give consent to The Company to conduct a comprehensive credit check on me/us, including making contact with a credit bureau or any other person or entity to provide the necessary information to conduct this check. The Company may also provide Credit Reference Agencies or Credit Bureaus with regular updates with how i/we conduct my/our account including my/our failure to meet the agreed terms and conditions. The Company may therefore make my/our records and details available to other credit grantors

We attach hereto: The latest audited Balance Sheets, Certificate of Registration, Vat Certificate and Copies of I.D. Documents.

Dated at ……………………………… on the ……………day of …………………………………………………. Year ………………………….

Company Stamp Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Capacity: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness

1. ………………………………………………….. …………………………………………………….

Print Name Signature

1. ………………………………………………….. …………………………………………………….

I.D. Number Capacity

**ATTENTION: THE MANAGERS OF RECOGNIZED FINANCIAL INSTITUTIONS**

I hereby authorize you to furnish a Director, Credit Manager or Administration Manager of SUNNYFIELD GROUP OF COMPANIES with any information which will assist them in assessing the creditworthiness of the customer and/or the Sureties.

Dated at ……………………………… on the ……………day of …………………………………. Year ………………………………………

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Capacity: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Company Stamp:

**PART B**

**GENERAL TERMS AND CONDITIONS**

**OF THE SUNNYFIELD GROUP OF COMPANIES**

1. **GENERAL**
   1. The Company only grants incidental credit to its customers as defined in the National Credit Act 34 of 2005 (‘NCA’)
   2. In these terms and conditions relating to both the granting of a credit facility as well as the sale of goods, the Company extending credit or selling will be referred to as “the Company” and the individual, Sole Proprietorship, Company, Close Corporation, Trust or Partnership obtaining credit or purchasing will be referred to as “the Customer”
   3. By signing the Credit Application form either individually or by a duly authorized representative, the Customer warrants that the information is correct and the Customer agrees that the following conditions will apply to all his/her/its dealings with “the Company".
      1. Any credit facility granted may subsequently be withdrawn by the Company at its sole discretion. In the event of this happening, all outstanding amounts owed by the Customer in terms of this agreement shall immediately become due and payable.
      2. It is also specifically understood and agreed that immediately upon the Customer’s sale of his/her/its business, the whole contract between the Customer and the Company will be terminated. Immediately upon such termination, all amounts owed by the Customer to the Company will become due, owing and payable by the Customer.
      3. Immediately upon termination of this contract by the Company or the Customer for whatever reason, all amounts then outstanding shall become due, owing and payable to the Company on the due date.
   4. Any amount that is owed by the Customer to the Company in respect of any claim that is not paid on the due date shall result in the total amount that is owed to the Company by the Customer, being due and payable immediately, and, any discount which the Customer may have been entitled to claim, shall be forfeited.
   5. All overdue amounts owing by the Customer to the Company shall bear interest at prime plus 2.5% of the Company’s bankers that exist from time to time, which, shall be calculated and payable monthly in advance on the 1st day of each and every month. Interest on the balance shall be capitalized monthly.
   6. If any claim against the Customer is in the hands of the Company’s attorneys, whether or not action is instituted and, without prejudice to any other rights which the Company may have, the Company shall be entitled to recover from the Customer all legal costs incurred, including all attorney/client charges, tracing fees and /or collection/commission that the Company is entitled to charge in terms of the National Credit Act 34 of 2005, which the Company is obliged to pay to it’s attorneys.
   7. A Certificate signed by the Director of the Company reflecting particulars of the amount owing by a Customer shall, upon the mere production thereof, be binding upon the Customer and be prima facie proof of the matters stated therein and of the fact that such amount is due and payable in any legal proceedings between the Company and the Customer and will be valid, inter-alia as a liquid document against the Customer in any competent court.
   8. The Customer shall not have any claim of any nature whatever against the Company for failure by the Company to carry out any of the obligations under the Agreement as a result of any default or delay of the Company’s suppliers on the Company itself.
   9. Notwithstanding anything herein to the contrary contained, ownership of goods sold to the Customer shall remain vested in, and is hereby reserved to, the company until the Company has received payment of the full purchase price of such goods, notwithstanding that they may have been purchased for resale. In addition to any other form of security called for or, held by the Company, the Customer hereby cedes to the Company of all its rights, title and interest in and to its debtors books. In the event of the occurrence of any one or more of the events contemplated in 8 infra (under sale), the Company shall be entitled to recover from the Customer’s debtors such sum as constitutes the Customer’s total indebtedness to the Company. The Customer shall at all reasonable times allow the Company’s representatives to respect and make copies of the Customer’s debtor’s books.
   10. The Customer agrees that the Company may:
       1. Perform a credit search on the Customer’s record with one or more of the registered Credit Bureaus when assessing the Customer’s Application for Credit.
       2. Monitor the Customer’s payment pattern by researching his/her/its record at one or more of the Credit Bureaus.
       3. Use new information and data obtained from Credit Bureaus in respect of the Customer’s future Credit Applications
       4. Record the existence of the Applicant’s account with any Credit Bureau.
       5. Record and transmit details of how the Customer has performed and how the account is conducted by the Customer to meet his/her/its obligations to the account.
   11. The Customer acknowledges and agrees that any information regarding his/her/its credit worthiness, defaults in payment to the Company, and details of how his/her/its account with the Company is conducted may be disclosed to any other creditor of the Customer or to one or more.
   12. The Customer acknowledges that it may contact any credit bureau that holds adverse information on it, and dispute the validity of such information with the bureau.
   13. Should it at any time be a requirement of the Company, the Customer agrees to register a Notarial bond over its movable property and/or a mortgage bond over its fixed property as security for its indebtedness to the Company. The Customer shall, in such instance, sign all documents and do all things necessary to register such bond immediately it is called upon to do so. If the Company does not wish to do so, then the Customer has the right to give notice of cancellation in writing.
   14. No indulgence or relaxation of rights granted by the Company shall be prejudicial to or constitute a waiver of any of the Company’s rights under this agreement or at law and any waiver of rights by the Company shall not be construed as such unless such waiver is reduced to writing and signed by the Company.
   15. Each and every undertaking herein shall be capable of independent enforcement, thus enabling any court or other competent tribunal to enforce the remainder of this agreement should it adjudge any particular undertaking or portion thereof to be invalid.
   16. The Customer chooses as its domicilium citandi et executandi for all purposes under this agreement at the address reflected in the Credit Application form above. Any notice to be given by the Company to the Customer pursuant to this agreement, shall be given in writing and shall be deemed validly served on the same day if delivered personally or SEVEN (7) days after it shall have been posted by prepaid registered post to the above-mentioned address.
   17. The Company is entitled to unilaterally cede or assign all and any of its rights and/or obligations to a third party upon 10 days notice to the Customer
   18. Any settlement discount offered by the Company shall be at its discretion and if offered shall be reduced to writing and signed by both customer and supplier.
   19. In the event the customer is de-registered, then the company shall be entitled to take whatever steps necessary to take the customer out of de-registration and costs shall be recoverable from the customer on attorney and client scale. The customer grants the company power of attorney to put into effect the provision of this paragraph.
   20. It is deemed that if goods are received and not returned within seven (7) days of date of delivery/dispatch that they are not defective and compliant with customer request/order specifications, then customer would bear onus to prove both non-delivery and defectiveness thereof.
   21. Goods signed for on receipt of delivery would constitute conclusive proof that same was received in good order.
   22. The recipient’s details must include individual’s designation and print name in bold capitals as we mostly cannot identify signatures
   23. The Company reserves right of ownership until goods are paid for in full and same can be uplifted wherever goods are found.
   24. Any dispute raised will not prevent the company from pursuing legal action for the recovery of amounts outstanding
   25. An automatic right is given to list customer’s payment history on credit bureau without further notice to the customer.
2. **SALE**
3. **CONCLUSION OF CONTRACT**
   1. The Company may place an order in respect of goods orally or in writing, which order shall constitute the Customer’s offer
   2. The Company shall be entitled to accept the Customer’s order in whole or in part.
   3. Upon acceptance by the Company of the Customer’s order, a contract of sale upon the terms set forth in these whole Terms and Conditions, both under the heading of General and Sale shall be deemed to have been concluded between the Customer and the Company in respect of the goods which the Company has agreed to supply.
4. **DELIVERY**
   1. Delivery shall be at an address and in a manner expressly agreed between the Company and the Customer.
   2. The Company shall have the right to deliver goods in whatever quantities and on however many separate occasions as it in its discretion may decide.
   3. The Company’s delivery note signed or countersigned by the Customer or any agent or employee of the Customer or any person purporting to act as an agent or employee of the Customer shall for all purpose be deemed to be accurate in all respects and binding on the Customer.
   4. Insofar as the delivery of the goods is concerned, and whilst every endeavor will be made to deliver timeously, time shall not be of the essence in any contract between the Company and the Customer and in the event of any delay in delivery by the Company or failure for any reason to effect delivery then:
      1. The Customer shall not be entitled to cancel the contract, nor,
      2. Impose any claim for damages against the Company.
5. **PRICE AND PRICE INCREASES**
   1. The price of the goods shall be stated by the company at the time of the conclusion of the contract unless varied in accordance with 3.3
   2. It is recorded that such price is based on but, not limited to costs to the Company of the products, or an increase in the manufacturing or supply process.
   3. If prior to delivery of the goods I terms of 2, there is any increase in the cost of such products, or an increase in the manufacturing or supply costs, or if any other taxes or duties are levied or if any laws are promulgated which directly or indirectly increase the costs to the Company of manufacturing or supplying the goods, the Company shall be entitled by written notice to increase the price of goods.
   4. This increased price shall be binding upon the Customer.
6. **PAYMENT**
   1. In respect of each contract, the purchase price shall be payable by the Customer to the Company within all terms days of the date of statement unless credit facilities have been refused, suspended or withdrawn, in which event, the purchase price shall be payable on delivery.
   2. In the event on the Company accepting any post-dated cheque, promissory note or any other bill of exchange from the Customer in respect of any indebtedness of the Customer, then the acceptance by the Company of the post-dated cheque, promissory note or any other bill of exchange shall be without prejudice to the Company’s rights in terms of any contract.
   3. If the price of any goods is not paid on due date, the Customer shall be obliged to pay interest thereon at the rate of the prime interest rate charged by ABSA Bank to its customers, plus 2.5% per annum from due date until date of final payment.
   4. All payments shall be made at the Company’s place of business, or at such other place the Company may nominate.
   5. In the event of any change in the Customer’s legal status, such as, but not limited to, a change in name, ownership, directorship, partnership or membership, the Customer is obliged to advise the Company in writing of such change failing which the subsequent entity shall be liable for all amounts payable regardless of whether the goods supplied and statements rendered were before the aforementioned change
   6. The Customer must raise any query regarding the correctness of its statement with the Company in writing within thirty (30) days of the date of such statement, failing which the Customer will be deemed to have accepted that the statement is correct.
   7. The customer agrees that all cash deposits by the customer shall generate a cash deposit fee of 1.1% which fee shall be debited to customer account
   8. Any customer cheque returned by the Company’s bankers with the notation ‘refer to drawer’ shall generate a fee of R500 which shall be debited to the customer account.

1. **SUSPENSION OF DELIVERIES**
   1. If any amount due and payable by the Customer to the Company is in arrear, the Company shall have the right until such amount has been paid to suspend any delivery under any contract then in force between the Company and the Customer.
   2. Notwithstanding anything to the contrary herein contained, the Company shall have the right to suspend any delivery under any contract at any time if in its sole discretion it considers that:
      1. The amount owing by the Customer (whether due or not) has reached the limit to which it is prepared to allow the Customer credit or;
      2. It comes to its notice that the Customer’s financial position has deteriorated, or
      3. If it no longer considers the Customer to be creditworthy, or,
      4. The Customer does not acknowledge that any contract is upon the terms set forth in these Terms and Conditions
2. **CLAIMS AGAINST THE COMPANY**
   1. No claim against the Company arising out of the sale of goods by the Company shall be capable of being enforced and the Company shall be liable in respect of such claim unless a written notice setting forth the nature, the claim and the amount claimed has been delivered to the Company within SEVEN (7) days of the delivery of the goods in respect of which the claim is made.
3. **EXCLUSIONS**
   1. The Company shall not be liable under any circumstances whatsoever for any loss or damage of any nature whatever, whether direct or indirect, consequential or otherwise, sustained as a result of any goods sold by the Company under any contract, being defective or not conforming to the description thereof or as a result of any other cause whatsoever, and the Company’s liability in respect of any goods sold by it shall be limited to that provided for in 7.3
   2. The Company:-
      1. Does not warrant or represent that the goods are fit for any particular purpose (whether or not that particular purpose is known to the Company)
      2. Shall not liable to the Customer in any way whatever for any defect, whether latent or patent, in any goods sold as sub-standard.
   3. If any goods not being sub-standard, are latently, patently, or otherwise defective and a claim lies against the Company in respect of such goods, then the Company may at its option decide either to:-
      1. Replace the defective goods, or,
      2. Reimburse the Customer in respect of the purchase price of the goods, or,
      3. Require the Customer to accept the goods at a reduced purchase price to be agreed, provided that if the parties are unable to agree on the amount of the reduction, that question shall be submitted to be resolved by an independent person agreed upon between the Company and the Customer, and failing such agreement, appointed by the President for the time being of the Kwa-Zulu Natal Law Society, and that person’s decision shall be final and binding upon the Company and the Customer.
   4. Any decision of the Company’s terms of 7.3 shall be notified to the Customer in writing.
   5. If so required by the Company, the Customer shall be obliged to re-deliver the defective goods to the Company at the Customer’s own cost and expense.
   6. The Company shall not be liable under any circumstances for any damages whatsoever of any nature whether direct or indirect, consequential or otherwise arising out of any contract with a Customer and in any event the liability of the Company to the Customer shall be limited to that provided for in 7.3.
4. **BREACH**
   1. The Customer shall be in breach of this Agreement if:-
      1. It fails to make payment in full, on or before the payment date, of any amount(s) owing by it or,
      2. There is material deterioration in your financial position. For purposes of this clause “material deterioration” means material deterioration in our reasonable opinion, or
      3. You commit any act of insolvency which may include:
         1. You agree to defer payment of any debt owing by you to any of your creditors; or
         2. You make, or offer to make, any arrangement with your creditors to release you wholly or partially from your debts; or,
         3. A writ of execution (a formal written order) issued by any competent court attaching any of your assets remaining unsatisfied for more than seven (7) days after the date on which it is issued, or,
         4. A provisional or final liquidation order being passed placing you under sequestration, or,
      4. Any court orders you to make payment of any amount owed and you do not make such payment within seven (7) days, unless an appeal has been noted against such order, or,
      5. A court grants a garnishee order attaching part of your income to settle an amount(s) owing by you, or,
      6. You are placed under administration, or
      7. You fail to disclose the location of the goods when requested to do so, or,
      8. Any representation, warranty or assurance made or given by you in connection with your application for this loan or any information or documentation supplied by you is, in our opinion, materially incorrect, or
      9. You generally do or omit to do anything which may prejudice our rights in terms of this Agreement or cause us to suffer any loss or damage.
      10. If the Customer is not a natural person and is in breach of this agreement, then the Company shall be entitled , without prior notice to the Customer:-
      11. To cancel any contract and/or any part thereof subsisting with the Customer and to claim return of the goods sold there-under, or,
      12. To claim from the Customer immediate payment of any monies due by the Customer to the Company notwithstanding any earlier agreement for credit, whether same is due for payment or not.
5. **CLAIMS AND DISPUTES**
   1. You may at any time contact a debt counsellor for assistance. The process to be followed is, briefly:
      1. Contact any debt counsellor and arrange for an appointment.
      2. Fill out the prescribed form (which shall be available from the debt counselor) and pay the prescribed fee.
      3. The debt counselor shall determine whether the conclusion of the Agreement was reckless and/or whether you were over-indebted
      4. If, in the opinion of the debt counsellor, at the time the Agreement was concluded, you were not over-indebted, then the debt review process shall be terminated immediately, and your obligations to THE COMPANY shall continue.
      5. If, in the opinion of the debt counsellor, at the time the Agreement was concluded, you were over-indebted, then the debt counselor will make a recommendation and refer the matter to a Tribunal of court for the Agreement to be declared reckless.
      6. If you are not over-indebted, but the debt counsellor believes that you will have difficulties satisfying the debt, then the debt counsellor may suggest that we voluntarily consider and agree on a debt re-arrangement plan.
   2. You may at any time refer any dispute you have with THE COMPANY to either contact the Consumer Tribunal or National Credit Regulator. The National Credit Regulator may be contacted at:
      1. Tel – (011) 5542600 or 0860 627 627
      2. Fax – (011) 4846122
      3. Email: [info@NCR.org.za](mailto:info@NCR.org.za)
      4. Physical address: 127 15th Road, Randjespark, Midrand.
6. **INTERPRETATIONS AND JURISDICTION**
   1. The contract shall be interpreted according to the laws of the Republic of South Africa
   2. The Customer consents to the jurisdiction of the Magistrate’s court otherwise having jurisdiction in respect of any action to be instituted against the Customer by the Company in terms hereof
   3. It shall nevertheless be entirely within the discretion of the Company as to whether to proceed against the Customer in such Magistrate’s court or any other court having jurisdiction.
7. **WHOLE AGREEMENT**
   1. The Company shall not be bound by any oral statements, recommendations, figures, advices, formula, specifications, price, quotes, acceptance or representations unless they are in writing and signed on behalf of the Company by its duly authorized representative.
   2. All sales of the goods by the Company are subject to these whole Terms and Conditions and no other conditions shall be on the parties notwithstanding that such conditions may be annexed to contained in or incorporated by reference in any document exchanged between the Company and the Customer.
   3. No variation or cancellation of any contract or of these terms ad conditions shall be binding upon the Company unless in writing and signed by a duly authorized representative of the Company.
8. **INCLUSIVE CLAUSE**

Unless inconsistent with the context, words relating to any gender shall include the other genders, words relating to the singular shall include the plural and vice versa and words relating to natural persons shall include associations of persons having corporate status by statute of common law.

Dated at ……………………………… on this …………..day of ………………………………….year…………………

Witness

1………………………………………………Signature ……………………………… Capacity ……………………………………………..

2 ……………………………………………… Name of authorized signatory………………………………………………………………….

Who warrants that he/she is duly authorized

Agreed by the Company on this …………….day of …………………………………… year ………………………………………

Full Name and Capacity of Branch

Name …………………………………………Capacity ………………………………… Signature …………………………………

**EXTRACTS OF THE MINUTES OF A MEETING OF THE DIRECTORS/MEMBERS OF:**

…………………………………………………………………………………………………..

“The Principal Debtor / The Customer

Registration Number ………………………………………………….

Held at ……………………………….on the ………… day of ………………………………. Year ………………….

RESOLVED THAT

…………………………………………………………………………………………………………………

In his/her capacity as Director/Member of

**…………………………………………………………………………………………………………..**

Is hereby authorized to sign the Terms and Conditions of Sale entered into, by and between, the Customer and the Company.

CERTIFIED A TRUE COPY OF THE ORIGINAL

Signature …………………………………………………………. Date ……………………………………………

**PART C**

**DEED OF SURETYSHIP AND CESSION**

1. I / We ……………………………………………………………………………………………………………………………… I.D.No. ………………………………………………………
   1. Married Y  N  C.O.P. Y  N  to …………………………………………… I D No ………………………………………………………. do hereby bind myself/ourselves, jointly and severally. The one paying the other / others to be absolved, as sureties and co-principal debtors in solidium with……………………………………………………………………………………………(Herein referred to as “The Principal Debtor”) unto and in favor of the Company or its successors in title or assigns, for the due and punctual payments of all amounts of whatsoever nature, and for the due performance of any and all debts, whether past, present or future, which may be due, owing and payable, or which in the future may become due, owing and payable by the Principal Debtors to The Company from whatsoever cause, and however rising and In the event the customer is deregistered, then the company shall be entitled to take whatever steps necessary to take the customer out of deregistration and costs shall be recoverable from the customer on attorney and client scale. The customer grants the company power of attorney to put into effect the provision of this paragraph.
2. The Company shall be at liberty, in its sole and absolute discretion, without/my/our prior knowledge or consent and without releasing me/us from my/our liability hereunder:
   1. To institute such proceedings or take steps as it may deem fit against the Principal Debtor/s including the right to repossess any goods sold to the Debtor and to deal therewith or sell same in such manner, in such price and on such terms as The Company in this sole discretion may decide, in which event the selling price shall be deemed to be the true market value of the goods sold.
   2. To compromise with or make other arrangements with the Principal Debtor and / or with any other sureties.
   3. To grant any leniency, indulgence or extensions of times to the Principal Debtor/s in respect of any existing or future agreement and/or enter into new arrangements and/or substitute new purchasers for the Principal Debtor/s.
   4. To cede, assign and/or transfer any of its right, title and interest in and to any or all of its claims against the Principal Debtor/s which may come into existence, in its own discretion and on such cession my/our liability shall continue in favor of the cessionary for both the existing liability at the date of the cession and also in respect of any further liability incurred by the Principal Debtor/s with the cession arising from any cause whatsoever.
3. In any or all of the events described above, my/our liability shall be co-extensive with that of the Principal Debtor/s.
4. I /We hereby indemnify and hold the Company harmless against any loss or damage which it may sustain for any reason whatsoever, irrespective of the validity and/or enforceability and/or causes of the claim/s against the Principal Debtor/s
5. I/We hereby waive and renounce the exceptions and/or benefits of “excussion”, “division”, “cession of action”, “revision of accounts” and “de doubus vel pluribus reis debendi” withfull force and effect of the meanings and renunciation whereof I/We acknowledge myself/ourselves to be fully acquainted.
6. It is agreed and declared that all admissions or acknowledgements of indebtedness by the Principal Debtor/s shall be binding on me/us.
7. This deed of Suretyship and Indemnity shall not be cancelled save with the written consent of The Company.
8. In the event of insolvency, liquidation, assignments or compromise by the Principal Debtor/s, The Company shall be entitled to prove against the Estate the full amount of the indebtedness and/or to accept any offer of compromise, whether at common law or in terms of any statutory provision, without prejudice to its rights to recover from me/us to the full extent hereof any sum which may be owing by the Principal Debtor/s.
9. I/We hereby agree and consent that The Company shall be entitled, at its option, to institute any legal proceedings which may arise out of or in connection herewith in any Magistrate’s Court having jurisdiction in respect of my/our person notwithstanding that the claim or the value of the matter in dispute might exceed the jurisdiction of the Magistrate’s Court.
10. I/We acknowledge and agree that a certificate signed by the Director, Credit Manager or Administration Manager of Sunnyfield Packing Company, for the time being setting out the amount of my/our indebtedness hereunder shall be sufficient and satisfactory evidence and shall constitute prima facie proof per se of the amount of my/our indebtedness to The Company.
11. The Company shall be at liberty, without discharging me/us from liability hereunder to grant time or other indulgences to the Principal Debtor/s, and shall likewise be at liberty to give such terms to and make such conditions with the Principal Debtor/s, as The Company shall think fit, and at all time or times, to alter, vary and revise the same or any part thereof, as The Company may consider advisable in its own interest, without reference to me/us and The Company shall also be at liberty to take any security/ies which it may think from the Principal Debtor/s, or any other surety/ies and in its discretion to realize and discharge or otherwise deal with any such security/ies or any part thereof.
12. Each provision of this agreement is severable from the other provisions and should a Court of competitive jurisdiction declare any provision to be invalid, the remaining provisions shall nevertheless remain binding and be of full force and effect.
13. I/We do hereby consent to the jurisdiction of the Magistrate’s Court having jurisdiction in terms of section 28 of the Magistrate’s Court Act No. 32 of 1944, as amended, in respect of any action arising out of or in connection with my/our obligations under this suretyship notwithstanding that the amount in issue may exceed the jurisdiction of such country.
14. I/We do hereby choose domicilium citandi et executandi for all purposes arising here out at the address/es set out below.

Dated at…………………………………………...… On this ………… Day of ………………………………….. Year ………………………………….

………………………………………………………………….. ………………………………………………………………………………..

Name of Signatory Signature of Surety

Full home address of Surety/Sureties

1. …………………………………………………………………………………………………………………………………………………………………………………

…………………………………………………………………………………………………………………………………………………………………………………

Name of Witnesses Signature of Witnesses

1. **……………………………………… …………………………………...**
2. **……………………………………… …………………………………...**

Signed at …………………………………………. On the …….. Day of ………………………………… Year …………………..

Name of Witnesses

1. ……………………………………………………………………
2. …………………………………………………………………… …………………………………………………………………………….

Acceptance the benefits hereof The Company

**TO BE COMPLETED ONLY IF MARRIED IN COMMUNITY OF PROPERTY - CONSENT OF WIFE (if applicable)**

I, the undersigned ……………………………………………………………………………….. I. D. No …………………………………………………………….

In my capacity as spouse of ………………………………………………………………. I. D. No …………………………………………………………….

To whom I am married in Community of Property do hereby consent, insofar it may be necessary, to the said

…………………………………………………………………. executing this Deed of Suretyship and Cession in favor of The Company

and thereby encumbering the joint estate.

Dated at ………………………………………… on this ……………….. Day of ………………………………… Year …………………

………………………………………………………………………….

Name of authorized signatory

Witnesses

Name ID No Capacity

1. ……………………………………………………… ………………………………………………………… …………………………………………
2. ……………………………………………………… ………………………………………………………… …………………………………………